

**RESOLUTION NO. 2045**

**A RESOLUTION ADOPTING A TRANSPORTATION DEVELOPMENT AGREEMENT TO ALLOW SEQUOIA PROPERTY DEVELOPMENT TO PROCEED WITH DEVELOPMENT OF AN OFFICE BUILDING WITHIN LOWRIE'S MARKETPLACE.**

WHEREAS, Sequoia Property Development ("Sequoia") desires to construct an office building on Pad A of Lowrie's Marketplace containing 24,660 square feet; and

WHEREAS, in Development Review Board Resolution 88, Sequoia has secured an modification to the Stage I Preliminary Plan for Pad A of Lowrie's Marketplace to allow an office building and also secured Site Design approval including a waiver to increase the building height; and

WHEREAS, Sequoia and the City of Wilsonville have determined and agreed that previous Stage II land use approvals will currently permit 47 p.m. peak hour trips ("available trips") which will allow only about 17,760 square feet of office space using the available trips based on traffic reports prepared for Sequoia and the City via the City's traffic consultant, DKS and Associates; and

WHEREAS, the City believes that extra capacity ("additional trips") will be created through the I-5/Wilsonville Road interchange in the future when desired improvements are made to the interchange; and

WHEREAS, the City and Sequoia desire to enter into a Development Agreement whereby Sequoia would limit and manage the use of any approved building by the City's Development Review Board of 24,660 square feet to the use of 17,660 square feet until additional traffic trip capacity is available and the City would permit the approved construction conditioned upon such limited and managed use; and

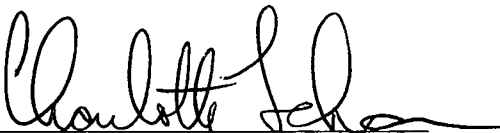
NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City Council adopts the above recital as findings and incorporates them by reference as if fully set forth herein;
2. The City Council approves the Development Agreement between the City and Sequoia Property Development, a copy of which is attached hereto as Exhibit A and incorporated

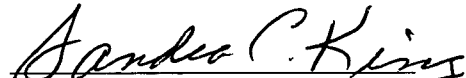
by reference as if fully set forth herein, and authorizes the City Manager to execute the Development Agreement on behalf of the City of Wilsonville.

3. The City Attorney shall approve as to final form.
4. The invalidity of any section, clause or provision of this resolution shall not affect the validity of the balance of the resolution.
5. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 16<sup>th</sup> day of April, 2007, and filed with the City Recorder this date.

  
CHARLOTTE LEHAN, MAYOR

ATTEST:

  
Sandra C. King, MMC, City Recorder

SUMMARY of votes:

Mayor Lehan	Yes
Councilor Kirk	Yes
Councilor Knapp	Yes
Councilor Ripple	Yes
Councilor Núñez	Yes

Attachment: Exhibit A - Development Agreement

## Exhibit A

### DEVELOPMENT AGREEMENT

WHEREAS, Sequoia Property Development ("Sequoia") desires to construct an office building in the Albertson's Center containing 24,660 square feet, and

WHEREAS, the City of Wilsonville Development Code ("WDC") requires Design Review approval for the office building, and

WHEREAS, part of the Development Review and zoning approval criteria is a traffic impact analysis, and

WHEREAS, Sequoia and the City of Wilsonville (the "City") have determined and agreed that previous land use approvals will currently permit 47 p.m. peak hour trips ("available trips") which will allow only about 17,760 square feet of office space using the available trips based on traffic reports prepared for Sequoia and the City via the City's traffic consultant, DKS and Associates, and

WHEREAS, the City believes that extra capacity ("additional trips") will be created through the I-5/Wilsonville Road interchange in the future when desired improvements are made to the interchange, and

WHEREAS, Sequoia and the City desire to enter into this Development Agreement to allow Sequoia to proceed with its office building subject to the terms of this Development Agreement providing for the possibility that additional trips may make additional square footage available to Sequoia for occupancy in the future, and

WHEREAS, Sequoia understands that 1) this agreement cannot be construed to be a building permit approval for that part of the office building that may be served by additional trips, 2) this agreement must be incorporated by the City's Development Review Board into a condition of land use approval for that part of the office building served by available trips, and 3) it bears the risk if such additional trips are not made available,

NOW, THEREFORE, the City and Sequoia do agree as follows:

#### 1. Agreement

Sequoia agrees to submit this Development Agreement as part of its Design Review application to the City's Development Review Board ("DRB"). This agreement provides that Sequoia may apply for and receive approval of an office building served by 47 trips, but may, at its discretion, construct the shell of the entire proposed building, containing approximately 24,660 square feet. Building permit approval beyond that necessary to construct the building shell and other necessary approvals for that 6,900 square foot portion of the building not served by the available trips are deferred, and subject to all city requirements at the time such approvals are sought. This agreement may not be interpreted to give Sequoia any vested right, expectation or privilege with respect to maintenance of, and future approvals for that part of the building not

served by available trips. Sequoia hereby waives any Measure 37 rights it may have with respect to the enforcement of City land use regulations on any part of the building.

No portion of the office building may contain retail uses, but if Sequoia in the future decides to provide some retail in the building, then it must comply with applicable City of Wilsonville development code regulations to include a new traffic impact analysis at the time it requests approval for retail occupancy.

In the event that the DRB approves the application, the Parties agree that the following calculation shall be applied:

A. Sequoia may construct 17,760 square feet for office uses provided the DRB incorporates this agreement in its partial approval of the office building. Sequoia and the City enter this agreement with the belief that such trips are available for this amount of square footage.

B. The remaining 6,900 square footage may be constructed but not occupied until such time as the City determines that additional trips are available through the I-5/Wilsonville Road interchange. This square footage is referred to as the "shelled square footage."

C. The City determines, based on traffic analysis that the 17,760 SF of occupiable space equates to 47 PM peak-hour traffic trips through the I-5/Wilsonville Road interchange based on the highest and best use occupancy. Once the developer has completed 17,760 SF of interior build-out and occupied such space with tenants, it shall authorize completion of a supplemental traffic report by DKS Associates within 90 days to determine if further interior space construction can be completed based on the 47 PM peak-hour trips constraint.

D. Additionally, the developer is encouraged to mitigate PM peak-hour trips generation through traffic management incentives such as encouraging use of flex-hour schedules, compressed work week option (such as four 10-hour days), a *Guaranteed Ride Home* program for employees who use alternative transportation modes, incentive program for employees who use alternative transportation, charge for parking (or parking cash out program), company-subsidized vanpool, showers/lockers for bicyclists/walkers, on-site services (such as cafeteria or ATM), on-site rideshare matching (example: provide a dedicated computer with internet access and instructions on signing up for carpool matching on the free regional carpool database), instituting a telework program, reserved carpool parking spaces, and encouraging use of public transportation (example: provide subsidy of Tri-Met passes for employees commuting from Portland).

If 47 PM peak-hour trips are not consumed at this point, additional interior in-fill of personnel or space completion through the building permit process may be allowed by the City based on a review of the supplemental traffic findings.

## **2. Sequoia's Obligations**

Sequoia understands and agrees that the DRB must review and approve its Design Review application and this Development Agreement. If either or both are not approved, then this Development Agreement shall be null and void. Sequoia further understands that it is

proceeding at its own risk, and that if it receives partial approval and chooses to construct the shell, additional trips through the I-5/Wilsonville Road interchange may not become available, in which case it shall take such actions to bring the building or part of the building into compliance with the code. Sequoia further agrees that it shall not hold the City liable for the unavailability of such trips, and shall bring no claim, action or other proceeding against the City in any way related to the unavailability of trips. Sequoia further agrees to defend and hold harmless the City, its officers, agents and employees from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses in connection with any petition, claim, demand, or cause of action made or brought by any third part, which in any way arises from, during, or in connection with the City's actions under this agreement.

**3. City Authority**

The City warrants and confirms that it has the authority to enter into this Development Agreement. If incorporated as a condition of land use approval by the Development Review Board, the Agreement shall be presented to City Council for approval.

Dated this \_\_\_\_\_ day of April, 2007.

By: \_\_\_\_\_  
Arlene Loble, City Manager

By: \_\_\_\_\_  
President, Sequoia Property  
Development

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael E. Kohlhoff, City Attorney

MEMORANDUM

**DATE:** April 16, 2007  
**TO:** Honorable Mayor and City Councilors  
**FROM:** Kristy Kelly, Associate Planner  
**SUBJECT:** Sequoia Office Building. Transportation Development Agreement to allow Sequoia Property Development to proceed with development of a 24,660 sq. ft. office building on Pad A of Lowrie's Marketplace.

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**BACKGROUND:**

On March 26, 2007, the Development Review Board – Panel B conditionally approved a 24,660 square feet office building. Conditions of approval PDA11 and PFC10 required that the applicant enter into a Development Agreement with the City, which is to be finally approved by the City Council.

The site was originally approved for development as part of the Lowrie's Marketplace Master Plan, case file 02DB07. The Lowrie's Marketplace development showed an 11,131 SF retail building proposed for Retail Pad A. A majority of the development associated with that land use review has been completed including curbs, sidewalks, site access parking areas and associated landscaping deeming the development vested in terms of trips. The land use approval associated with the retail pad permits 47 p.m. peak hour trips. Because the original approval was for retail use, a traffic report was prepared to determine the amount of office space that would generate an equal amount of p.m. peak hour trips. Based on traffic reports prepared for Sequoia and the City via the City's traffic consultant, DKS and Associates, the trips will allow only about 17,760 square feet of office space.

This did not meet the needs of the applicant; therefore, the applicant's attorney began discussions with the City. The outcome of these discussions is the development agreement before Council in Proposed Resolution No. 2045.

**SUMMARY:**

The proposed development agreement provides that Sequoia may apply for and receive approval of an office building served by 47 trips but, at its discretion, may construct the shell of the entire proposed building, containing approximately 24,660 square feet. Building permit approval beyond that necessary to construct the building shell and other necessary approvals for that 6,900 square feet portion of the building not served by the available trips are deferred, and subject to all city requirements at the time such approvals are sought. In other words, until available capacity through the I-5 / Wilsonville Road interchange area has been planned and funded.

In Resolution No. 88 the Development Review Board is recommending that Council approve the Development Agreement. The DRB approved the site design plans and a building height waiver contingent upon Council approval of the Development Agreement.

**RECOMMENDATION:**

**Staff respectfully recommends that the City Council approve the Development Agreement as reference in Resolution No. 2045 as Exhibit A.**